THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.17977 OF 1999

DATED:23.8.2005

Between:

K.C.P. & K.I.C. Independent Workers Union

Vuyyuru, Krishna District

…Petitioner

And

The Government of Andhra Pradesh, Rep. by its

Special Chief Secretary to Government,

Labour, Employment, Training & Factories (LAB-I) Department,

Secretariat Buildings, Hyderabad and others

…Respondents

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ORDER:

The petitioner claims to be recognized workers' union of the fifth respondent company. The petitioner's union entered into a settlement under Section 12(3) of the Industrial Disputes Act, 1947 (for short, the Act). According to the petitioner, fifth respondent did not take any earnest steps to implement the settlement, which resulted in petitioner union going on strike. It is also alleged that respondents 3 and 4 did not take adequate steps for implementation of the settlement by the fifth respondent. Be that as it is, petitioner again issued a strike notice under Section 22(1) of the Act whereupon the third respondent entered into reconciliation and

submitted failure report to first respondent. After considering the same, first respondent by order in G.O.Rt.No.653, dt.15.4.1999 referred three issues to Industrial Tribunal-cum-Labour Court, Guntur. Not satisfied with the same, petitioner filed present Writ Petition praying this Court (i) declare the action of the respondents in not implementing the settlement dt.13.11.1996 under Section 12(3) of the Act as illegal and arbitrary; (ii) declare the action of respondents in not referring all the disputes as raised in the strike notice dt.2.1.1999 as illegal and arbitrary and (iii) for a consequential direction to respondents to implement the agreement.

A counter affidavit is filed on behalf of respondents 1 and 2 by second respondent. A counter affidavit is also filed on behalf of fifth respondent. When the case was heard, learned Government Pleader for Labour for respondents 1 to 3, and learned counsel for fifth respondent are absent and there is no representation. In their counter affidavit respondents 1 and 2 sustained the impugned G.O. stating as under.

> Regarding the other demands the Conciliation Officer has reported that item No.2 which pertains to the re-instatement of the Secretary of the Union and two others a petition is pending before the Labour Court under Section 2-A of the Industrial Disputes Act. As regards demand No.5 relating to failure to implement the Agreement dated 13.11.1996, between the Management of the Company and the petitioner Union, the Conciliation Officer has forwarded a proposal of the Labour Officer, Machilipatnam, for prosecution of the Management for the alleged non-implementation of the agreement. This proposal has been under examination in further consultation with Dy. Commissioner of Labour, Eluru by which time this petition was filed. The Conciliation Officer has further stated that item No.6 of the charter of demands relates to implementation of ESI Scheme and same has to be placed before the Regional Joint Director, ESI, Vijayawada, by the Union. Similarly, item No.8 relating to non-payment of overtime wages has to be placed before the Dy. Chief Inspector of Factories, Vijayawada. The Conciliation Officer further opined that item No.7 relating to employment of Contract Labour in prohibited areas of the Factory needs further verification and that the Union has to raise an individual dispute regarding change of work place and the department as a measure of victimization before the Asst. Commissioner of Labour concerned regarding to examine the demand No.9 of the Charter.

No reply affidavit is filed by the petitioner denying counter averments. Therefore, in spite strenuous contention of learned counsel for the petitioner that impugned order is bad, this Court is not able to accept the same.

In **Ram Avtar v. State of Haryana** the Supreme Court considered the scope of judicial review in relation to an order passed under Section 10(1) of the Act by the Government. While holding that Government performs administrative act either making or refusing to make reference under Section 10(1) and further holding that the Government while doing so cannot delve into merits of the dispute and part upon itself in determination of lis, it was laid down:

> Section 10 requires the appropriate Government to be satisfied that an industrial dispute exists or is apprehended. This may permit the appropriate Government to determine prima facie whether an industrial

> dispute exists or the claim is frivolous or bogus or put forth for extraneous and irrelevant reasons not for justice or industrial peace and harmony. Every administrative determination must be based on grounds relevant and germane to the exercise of power. If the administrative determination is based on grounds irrelevant, extraneous or not germane to the exercise of power it is liable to be questioned in exercise of the power of judicial review. In State of Bombay v. K. P. Krishnan (1961) 1 SCR 227 at 243: (AIR 1960 SC 1223 at p. 1230) it was held that a writ of mandamus would lie against the Government if the order passed by it under Sec. 10(1) is based on or induced by reasons which, as given by the Government are extraneous, irrelevant and not germane to the determination. In such a situation the Court would be justified in issuing a writ of mandamus even in respect of an administrative order. May be, the Court may not issue writ of mandamus, directing the Government to make a reference but the Court can after examining the reasons given by the appropriate Government for refusing to make a reference come to a conclusion that they are irrelevant, extraneous or not germane to the determination and then can direct the Government to reconsider the matter. This legal position appears to be beyond the pale of controversy.

After perusing the counter averments, this Court is satisfied that there were relevant grounds before the Government for not referring all the disputes raised in the strike notice given by the petitioner.

The Writ Petition is devoid of merits and is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

23.8.2005

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